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September 24, 2024

Hon. Jennifer E. Willis
United States District Court
Thurgood Marshall
United States Courthouse
40 Foley Square, Rm. 425
New York, NY 10007

Re: Kintetsu World Express (U.S.A.), Inc.
v. Dialectic Distribution LLC
Docket No.: 1:21-CV-09579 (JHR)(JW)
Our File: 6405

Dear Judge Willis,

We represent the plaintiff, Kintetsu World Express (U.S.A.), Inc. ("KWEUSA") in this matter. We write as a matter of urgency concerning the threatened default of the Defendant to produce Owen Green for deposition this Thursday, September 26 as ordered on August 21. ECF Doc. 82. Yesterday, the Defendant produced Mr. Zeltzer as scheduled and today KWEUSA produced Mr. Miyagi. After Mr. Miyagi's examination, counsel for the Defendant stated that he would not produce Mr. Green until *further* Ordered by the Court following the exchange of letters (ECF Docs. 87 and 88) that the parties were directed to file at an August 21 discovery conference. This dispute was addressed in person today via Zoom by the undersigned with counsel for Defendant, Mr. Rubenstein, in conformity with your Individual Practice Rule II.A, and unresolved.

The deposition of Mr. Green was one of the specific subjects of the discovery conference. KWEUSA had noticed his deposition in January without objection. Following the conference, you Ordered that "The four depositions of the Parties current domestic employees are to be held on September 23, 24, 26, and 27, 2024. All four depositions are to start at 10:00 am via Zoom." ECF Doc. 82. This Order issued after the following colloquy at the conference:

[THE COURT] So, again, I'm going to have my deputy escort you [Defendant's counsel] to get your computer, your phone, whatever you need. Once you're back up here the clock is ticking. You all have ten minutes --

MR. SCHMIDT: Thank you.

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THE COURT: -- to pick some dates or I'm picking them out of a hat.

MR. RUBENSTEIN: Just to put a clarification, Your Honor, one of the two Dialectic witnesses, Owen Green, as I mentioned is technically not an employee of Dialectic, the defendant, Distribution, LLC. So what I would respectfully suggest is that we're waiting for --

THE COURT: Sir, you didn't bring that as an objection. It's obviously an issue that --

MR. RUBENSTEIN: No, but --

THE COURT: -- has made and made it sounds like as far back as January, and here we are in August, so.

MR. SCHMIDT: Right.

MR. RUBENSTEIN: What I'm saying is the same exact argument --

THE COURT: It's not good for the goose, good for the gander. It's a very tailored argument. And also, you hadn't objected on that basis. They had. So **I want him schedule.**

So, look, if it is that you want to include an extra two pages to talk about, Mr. Green, that's fine. The letter is due on the 4th, so I guess you can schedule him for some time between the 4th and October 11.

And if you want to put something that is earth changing in your portion of the briefing, **maybe I will change my mind. But in the meantime, find the man's schedule. Pick some days or I am picking them out of a hat.**

MR. RUBENSTEIN: Yes, Your Honor.

(Brief recess)

THE COURT: Do we have dates?

MR. SCHMIDT [sic: MR. LILLIS]: Okay. So we have four dates where we're going to do depositions via Zoom starting at 10:00 a.m. They are the 23rd, 24th, 26th, and the 27th September.

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We are going to do a Dialectic witness on the 23rd, a Kintetsu witness on the 24th, a Dialectic witness on the 26th, and Kintetsu to witness on the 27th.

* * *

THE COURT: All right. And is that your understanding as well, Defense Counsel, that these are the dates and that is the protocol that will be utilized?

MR. RUBENSTEIN: Yes. . . .

Transcript, ECF Doc. 86, at pp. 57, l. 17 – 60, l. 4; emphasis the undersigned's.

The parties submitted their respective letters on September 4. The Court has not changed its mind. We request that the Court urgently issue a further directive that the Defendant comply with the August 21 Order under penalty of appropriate sanctions.

We take this opportunity also to alert the Court to the non-compliance with other elements of the August 21 Order. ECF Doc. 82. As the Thursday deposition is a time-sensitive matter, we will defer addressing these other discovery failures to a separate letter motion.

If you have any questions or desire any further information, we are at your disposal to respond. In the meantime, we thank the Court for its time and consideration.

Very truly yours,

KENNEDY LILLIS SCHMIDT & ENGLISH

By: 
Charles E. Schmidt

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cc: David Rubenstein, Esq
via ECF